

APPEAL NO. 010354

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 11, 2001, a hearing was held. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained an occupational disease on _____, and that the claimant had disability from September 24 to October 24, 2000. The appellant (carrier) appealed. No response was received from the claimant.

DECISION

The hearing officer's decision has become final under Section 410.169 because the carrier's request for appeal was not timely filed with the Texas Workers' Compensation Commission (Commission).

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for appeal shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002659, decided December 12, 2000. Pursuant to Rule 156.1(a), each carrier shall designate a representative to act as agent for receiving notice from the Commission and, pursuant to Rule 156.1(c), notice to the carrier's Austin representative is notice from the Commission to the carrier.

Records of the Commission show that the carrier's Austin representative received a copy of the hearing officer's decision on January 26, 2001. Therefore, the carrier received the hearing officer's decision on January 26, 2001. The carrier states that it received the hearing officer's decision on that date. The 15th day after January 26, 2001, was Saturday, February 10, 2001; thus, under Rule 102.3(a)(3), the period for mailing the appeal was extended to Monday, February 12, 2001. The appeal is dated February 12, 2001, and contains a certificate of service dated February 12, 2001. The envelope in which the appeal was mailed does not contain a USPS postmark date. It does have a postage meter stamp that is somewhat unclear but could be dated February 12, 2001. However, since the 20th day after January 26, 2001, was Thursday, February 15, 2001, and the appeal was date stamped as having been received by the Commission on February 20, 2001, the appeal was not received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision and is untimely.

The decision and order of the hearing officer have become final under Section 410.169.

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge